SINGAPORE REPORTS.

TOH AH LOH AND MAK THIM v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J., Laville, J. and Brown, J.) October 30, 1948]

[Singapore — Criminal Appeal No. 54 of 1948]

Firearms and Ammunition (Unlawful Possession) Ordinance 1946 S. 3 — Possession of ammunition — Meaning of "possession".

In this case the accused were charged with unlawful possession of ammunition. The first accused pleaded guilty and the learned Judge postponed sentence until after the hearing of the case against No. 2, but he was allowed to remain in Court. At the conclusion of the prosecution case against No. 2 accused, he elected to make a statement from the dock. In giving his statement he was interrupted twice by the learned trial Judge and told, in effect, that he must not give hearsay evidence. Accused No. 2 then called No. 1 accused as a witness but before this was done the learned Judge passed sentence on him. He was then examined by the learned trial Judge and after cross-examination by the D.P.P., Accused No. 2 was asked if he wanted to ask him any question. The learned trial Judge then summed up to the Jury. The accused was convicted and he appealed against his conviction.

Held, (1) that as the first accused was intended to be called by the second accused, be should have been removed not only from the dock but from the Court also; (2) that an accused making a statement from the dock should be allowed to do so in his own way whether or not part of what he says is, technically, inadmissible or not; (3) that as the first accused was called by the second accused as his witness, the second accused should first have been asked what he wanted to ask the witness and any questions that the learned Judge desired to put to clear up any matters should have been put to the witness after the questions by the accused, cross-examination and any re-examination; (4) that possession in order to incriminate a person, must have the following characteristics: (a) the possessor must know the nature of the thing possessed. (b) the possessor must have in him a power of disposal over the thing and (c) the possessor must be conscious of his possession of the thing; (5) that it was essential to direct the jury that before they could convict the accused of being in "unlawful possession", they must be satisfied that he knew the boxes carried by him contained ammunition; (6) that in the circumstances the trial was unsatisfactory and there should be a new trial.

CRIMINAL APPEAL.

Appellants in person.

L. Rayner for the Respondent.

The judgment of the Court of Appeal was delivered by :—

Gordon-Smith, Ag. C. J. : — In this appeal No. 1 accused appealed as regards his sentence only and No. 2 accused appealed against his conviction. The charge was unlawful possession of ammunition, 48,952 rounds in ammunition boxes.

The appeal of No. 1 was dismissed and that of No. 2 accused was successful to the extent that the conviction was quashed and retrial was ordered. We stated that we would give our reasons later.

Accused No. 1 pleaded guilty and the learned Judge postponed sentence until after the hearing of the case against No. 2 accused. He should have been removed not only from the dock but from the Court also. He was, later, called by No. 2 accused as a witness and had been in Court the whole time. This of course was not actually very material but it was undesirable.

At the conclusion of the prosecution case against No. 2 accused (he was unrepresented) he elected to make a statement from the dock. He was twice interrupted by the Judge and told, in effect, that he must not give hearsay evidence. We think that an accused making a statement from the dock should be allowed to do so in his own way whether or not part of what he says is, technically, inadmissible or not. Accused No. 2 then called No. 1 accused as a witness, but before this was done the learned Judge passed sentence on him in respect of his earlier plea of guilty and then he went into the witness box. He was then examined by the learned Judge and, after cross-examination by the D.P.P., accused No. 2 was asked if he wanted to ask him any questions and put one question to the witness. Accused No. 2 should, after his witness had been sworn and had given his name and address, have been asked what he wanted to ask the witness. Any questions that the learned Judge desired to put to clear up any matters should have been put to the witness after the questions by the accused, cross-examination and any re-examination.

In his summing up to the jury and by way of illustration, the learned Judge put to the jury the case of an unloading coolie at the docks, carrying ashore some loads or luggage which contained ammunition and stated that it would be unfair to say that such coolie was in possession of the ammunition, and he indicated to the jury that the evidence showed that No. 2 accused might fairly be accepted as an unloading coolie. The learned Judge stated quite plainly that the accused's defence was that he did not know that it was ammunition being unloaded but he then puts the prosecution case and the circumstances and place of such unloading which go to show the contrary and he expressed his own view that the possession was unlawful but that in other circumstances it might have been a good defence. Admittedly he left the matter to the jury but he stated that "possession" had no technical meaning. Possession, in order to incriminate a person, must have the following characteristics. The

possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of *mens rea,* without which (except by statute) possession cannot be criminal. It was necessary therefore to put these factors before the the jury. It was essential to direct the jury that before they could convict the accused of being in "unlawful possession", they must be satisfied that he knew the boxes contained ammunition. Such knowledge was of the essence of the offence and to quote *Halsbury* Vol. IX p. 12 para. 4. "Where a particular intent or state of mind is of the essence of an offence, the person committing the act is not criminally responsible if he had no *mens rea* and the act was ordered or procured by another person — but the person who ordered or procured the act is criminally responsible."

Accused No. 2 was engaged fortuitously in a nearby village to help unload 40 odd boxes on a sampan on to a lorry. In fact, it was a Police trap, but it might very well have been pointed out to the jury that D.P.C. 4026 taking part in the trap and who also assisted in the unloading stated that he did not know and could not see what the boxes contained. The accused told us that he thought the boxes contained tinned provisions.

For all these reasons we thought that the trial was unsatisfactory and that there should be a new trial.

New Trial Ordered.

NG KIM BENG v. TAY SIONG CHUAN.

[App. Civil Juris. (Gordon-Smith, Ag. C.J.)
February 16, 1949]

[Singapore — District Court Appeal No. 17 of 1948]

Landlord and Tenant — Control of Rent Ordinance, Ss. 12(2), 14(1) (d) and (m) — "Premises", definition of — Letting into possession of exclusive use of two rooms with use in common of dining room, bathroom, lavatory and kitchen where each has his own cooking space — Whether "part of house let as a separate dwelling" or a "sharing agreement" — Whether English decided cases referable and applicable.

In this case the Appellant (Defendant) was the tenant to the Respondent (Plaintiff) of two rooms of the first floor of house No. 369 Onan Road, Singapore and had the right to use, in common with the landlord, the Respondent (Plaintiff), the back portion of the ground floor of the house which he used as a dining room, the kitchen where each had his own cooking space, the bathroom and lavatory. The question before the Court was whether or not, in the circumstances, the premises rented to the appellant were premises within the meaning of the Control of Rent Ordinance No. 25 of 1947.

Held, that there was a sharing of the house in question and there was no tenancy protected by the Control of Rent Ordinance.

The facts are fully set out in the Judgment of Bellamy, D.J.

Cases referred to :—

(1) *Llewellyn v. Hinson* (1948) 2 A.E.R. 95.
(2) *Neale v. Del Soto* (1945) 1 A.E.R. 191.
(3) *Sharpe v. Nicholls* (1945) 2 A.E.R. 55.
(4) *Cole v. Harris* (1945) 2 A.E.R. 146.
(5) *Kenyon v. Walker* (1946) 2 A.E.R. 595.
(6) *Winters v. Dance* W. N. July 31, 1948 p. 318.
(7) *Leonard v. Nachiappa Chetty* 4 F.M.S.L.R. 265.

Bellamy, D. J. : — This case raises a short but very important point in regard to lettings in the Colony where the tenant has the exclusive use of some rooms in a house and shares certain accommodation in the same house with others.

The agreed facts are that the defendant is the tenant to the plaintiff of two rooms on the first floor of the house in question and has the right to use, in common with his landlord, the plaintiff, the back portion of the ground floor of the house which he uses as a dining room, the kitchen where each has his own cooking space, the bathroom and lavatory. The question is whether or not in these circumstances, the Control of Rent Ordinance applies.

In the Control of Rent Ordinance "premises" is defined, leaving out immaterial words, as "any dwelling house.....and any part of any premises let or sublet separately". It follows that before the Ordinance can apply there must be a letting of a dwelling house as a whole or a letting of any part of a house separately.

The point taken by the plaintiff is that the part of the house that was let to the defendant was not let "separately" and that in this case, it is contended, there is a sharing of the house and that accordingly, the Control of Rent Ordinance does not apply. Reliance is placed upon *Neale v. Del Soto*(2) where it was held that where there was a letting of certain rooms in a house together with the right to use the kitchen in common with the landlord, there was no letting as a separate dwelling house. This case was followed in *Cole v. Harris*(4), where certain rooms which did not include a kitchen were used in common by the landlord and two tenants.

Mr. Morrison has urged that the English decisions do not apply as the Rent Restriction Acts are not the